

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 14, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONNA P.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:19-CV-03271-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING FOR
ADDITIONAL PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 17, 18. Attorney Victoria Chhagan represents Donna P. (Plaintiff); Special Assistant United States Attorney David Burdett represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff filed an application for Supplemental Security Income on October 24, 2016, alleging disability since March 10, 2013¹, due to problems with her memory, PTSD, bipolar disorder, depression, anxiety, mood disorder, panic attacks, seizures, sleeping disorder, and learning disorder. Tr. 61-62. The application was denied initially and upon reconsideration. Tr. 98-101, 126-28. Administrative Law Judge (ALJ) C. Howard Prinsloo held a hearing on August 20, 2018, Tr. 34-59, and issued an unfavorable decision on November 30, 2018, Tr. 15-28. Plaintiff requested review of the ALJ's decision by the Appeals Council. Tr. 212-14. The Appeals Council denied the request for review on September 19, 2019. Tr. 1-6. The ALJ's November 2018 decision is the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on November 15, 2019. ECF No. 1.

STATEMENT OF FACTS

Plaintiff was born in 1982 and was 33 years old as of her alleged onset date. Tr. 26. She did not finish high school, but completed her GED. Tr. 48. Her work history has consisted of a series of short-term jobs, including work as a dishwasher, a dispatcher, an office assistant, a waitress, and a seasonal field worker. Tr. 53-54, 243, 269. She has reported a history of sexual and psychological abuse and she has struggled with mood stability most of her life. Tr. 276, 547. She testified her last job ended when her bipolar symptoms flared up and she had an incident with her supervisor. Tr. 42-43.

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¹ At the hearing Plaintiff amended her alleged onset date to October 24, 2016, the filing date of the application. Tr. 40-41.

STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant

1 from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant
2 cannot perform past relevant work, the ALJ proceeds to step five, and the burden
3 shifts to the Commissioner to show (1) the claimant can make an adjustment to
4 other work; and (2) the claimant can perform specific jobs that exist in the national
5 economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-
6 1194 (2004). If a claimant cannot make an adjustment to other work in the national
7 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

8 ADMINISTRATIVE FINDINGS

9 On November 30, 2018, the ALJ issued a decision finding Plaintiff was not
10 disabled as defined in the Social Security Act. Tr. 15-28.

11 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
12 activity since the application date. Tr. 17.

13 At step two, the ALJ determined Plaintiff had the following severe
14 impairments: bipolar disorder, depressive disorder, and anxiety disorder. *Id.*

15 At step three, the ALJ found Plaintiff did not have an impairment or
16 combination of impairments that met or medically equaled the severity of one of
17 the listed impairments. Tr. 18-20.

18 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
19 she could perform work at all exertional levels, but had the following
20 nonexertional limitations:

21 The claimant is limited to simple, routine, and repetitive tasks with
22 only brief and superficial interaction with the public or coworkers.
23 She should not perform work at unprotected heights or around any
24 dangerous or moving machinery.

25 Tr. 20.

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1 At step four, the ALJ found Plaintiff was unable to perform her past relevant
2 work as a general clerk, hand packager, informal waitress, telephone operator, fruit
3 harvest worker, or kitchen helper. Tr. 26.

4 At step five the ALJ found that, considering Plaintiff's age, education, work
5 experience and residual functional capacity, there were jobs that existed in
6 significant numbers in the national economy that Plaintiff could perform,
7 specifically identifying the representative occupations of touch-up screener,
8 cleaner II, and production line solderer. Tr. 27.

9 The ALJ thus concluded Plaintiff was not under a disability within the
10 meaning of the Social Security Act at any time from the date the application was
11 filed through the date of the decision. Tr. 27-28.

12 ISSUES

13 The question presented is whether substantial evidence supports the ALJ's
14 decision denying benefits and, if so, whether that decision is based on proper legal
15 standards.

16 Plaintiff contends the Commissioner erred by (1) erroneously rejecting the
17 opinions of Plaintiff's mental health counselors; and (2) improperly evaluating the
18 opinion of a psychological consultative examiner.

19 DISCUSSION

20 1. Treating counselors Garcia and Baker

21 Plaintiff argues the ALJ erred by improperly rejecting the opinions from
22 Plaintiff's treating counselors, Ivonne Garcia, MSW, MHP, and Sasha Baker,
23 MSW. ECF No. 17 at 3-17.

24 An ALJ may discount the opinion of an "other source," such as a counselor,
25 if they provide "reasons germane to each witness for doing so." *Molina v. Astrue*,
26 674 F.3d 1104, 1111 (9th Cir. 2012).

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1 *a. Garcia's Medical Source Statement*

2 On November 29, 2016, Plaintiff's treating counselor, Ivonne Garcia,
3 completed a medical source statement commenting on Plaintiff's work-related
4 limitations. Tr. 512-14. She opined Plaintiff was markedly limited in her ability to
5 work in coordination with or proximity to others without being distracted by them,
6 and that she was moderately limited² in carrying out detailed instructions,
7 maintaining attention and concentration for extended periods, sustaining an
8 ordinary routine without special supervision, completing a normal workweek
9 without interruptions from psychologically-based symptoms, performing at a
10 consistent pace without an unreasonable number and length of rest periods,
11 responding appropriately to changes in the work setting, traveling in unfamiliar
12 places or using public transportation, and setting realistic goals or making plans
13 independently of others. Tr. 512-13. Ms. Garcia further opined that even a minimal
14 increase in mental demands or change in the environment would be predicted to
15 cause Plaintiff to decompensate, and that she would be off-task 12-20% of the time
16 in a 40-hour workweek and would be likely to miss four or more days of work per
17 month. Tr. 514.

18 The ALJ gave this opinion no weight, finding it to be internally inconsistent
19 without explanation for the inconsistencies, and finding the prediction of
20 decompensation in the face of additional mental demands to be inconsistent with
21 Plaintiff's activities of daily living and care of her children. Tr. 25. The ALJ
22 further noted Plaintiff had been out of therapy for seven months prior to the
23 completion of this paperwork and was dealing with the loss of her job, and noted
24 that in the months following, Plaintiff was feeling calmer and better. *Id.* Finally,
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26 ² The form defined "moderately limited" as "significant interference with
27 basic work-related activities, i.e., unable to perform the described mental activity
28 for at least 20% of the workday up to 33% of the workday." Tr. 512.

1 the ALJ found the opinion inconsistent with the record evidence of minimal
2 psychiatric observations and minimal treatment with effective medication. *Id.*

3 Plaintiff argues the ALJ's rationale is insufficient, as it misinterprets the
4 opinion to find inconsistency, and substantial evidence does not support the ALJ's
5 conclusions with respect to Plaintiff's activities and the record as a whole. ECF
6 No. 17 at 4-14. Defendant does not specifically address the ALJ's rejection of this
7 opinion. ECF No. 18 at 5-7.³

8 The Court finds the ALJ failed to offer any germane reasons for discounting
9 Ms. Garcia's mental medical source statement. The consistency of a medical
10 opinion with the record as a whole is a germane factor for an ALJ to consider in
11 evaluating the weight due to an "other source." 20 C.F.R. § 416.927(c)(2)(4),
12 416.927(f). However, the ALJ's discussion of the record is not an accurate
13 summary of the evidence. Nearly half of the ALJ's citations to contradictory
14 records are from prior to Plaintiff's alleged onset date, and thus have no bearing on
15 her disability status as of October 2016. Tr. 25 (citing records contained at Tr. 337,
16 390, 478, 482, 486, 487). The other citations are not representative of the record as
17 a whole. While ALJs must rely on examples to illustrate their findings, the
18 examples they choose must be reflective of the broader context of the record. An
19 ALJ cannot simply "pick out a few isolated instances of improvement over a
20 period of months or years" but must interpret "reports of improvement ... with an
21 understanding of the patient's overall well-being and the nature of her symptoms."
22 *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014). The record documents
23 Plaintiff experienced periods of relative stability alternating with exacerbation of
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25 ³ Defendant addressed the ALJ's identical discussion of the medical records
26 in the context of Ms. Garcia's other opinion on a DSHS WorkFirst form, but did
27 not defend the ALJ's discussion of Ms. Garcia's medical source statement at Tr.
28 512-14. ECF No. 18 at 6-7.

1 her symptoms, hypomanic phases, and deterioration in her functional abilities. Tr.
2 529-40 (doing better in late 2016 to early 2017); 517-24 (destabilizes February-
3 March); 560-61, 565 (starts group therapy, doing better in May); 552-53, 556
4 (worse at end of May, changes in medications made); 656-57, 661-62 (changes in
5 medication, doing better by July); 654 (has incident with her therapist, changes
6 therapists in September); 639-45 (cannot recognize she is in a manic phase,
7 changes therapists again); 638 (not doing well in November); 635 (reports feeling
8 better in December); 628 (more depressed in January 2018); 625 (better in early
9 February); 616-22 (worsening symptoms, increased use of anxiety medication
10 through March and April); 610 (feeling more stable in May); 605-08 (doing worse
11 in June); 596-97, 600-03 (doing much better in July, but still reporting a week-long
12 depressive episode). The cycles of improvement and worsening symptoms are not
13 captured by the ALJ's characterization of the record as showing minimal
14 psychiatric observations and effective treatment with medication. Similarly, the
15 ALJ's implication that Plaintiff was merely experiencing temporary situational
16 stressors at the time the opinion was completed and demonstrated improvement
17 within a few months ignores the cyclical nature of Plaintiff's condition and her
18 subsequent ups and downs documented throughout the record.

19 None of the ALJ's other rationale is supported by substantial evidence. The
20 ALJ found Ms. Garcia's opinion to be internally inconsistent, but the Court finds
21 no inconsistency between the various moderate and marked limitations and Ms.
22 Garcia's opinion that Plaintiff would be overall off-task up to 20% of a workweek
23 and likely to miss work four or more times per month. Tr. 514. The ALJ found Ms.
24 Garcia's comment about increased pressures leading to decompensation to be
25 inconsistent with Plaintiff's activities of daily living and care for her children;
26 however, this misunderstands the nature of the opinion, as Ms. Garcia opined that
27 *additional* demands would be expected to lead to decompensation. Tr. 514.
28 Effectively, she was opining that Plaintiff could not handle more than she was

1 already doing. This is not inconsistent with being able to handle a minimal amount
2 of self-care and caring for her children. It is also supported by the fact that Plaintiff
3 was not able to maintain the additional demands of a full-time job for more than
4 three months before her bipolar symptoms flared up in October 2016. Tr. 42-43,
5 477.

6 The Court therefore finds the ALJ failed to offer any germane reasons for
7 discounting Ms. Garcia's medical source statement. On remand the ALJ will
8 reconsider the opinion along with the rest of the record.

9 *b. WorkFirst forms*

10 In November 2016 Ms. Garcia completed a WorkFirst form for the
11 Department of Social and Health Services. Tr. 568-70. She noted Plaintiff would
12 often get severe anxiety attacks around people or when under stress, preventing her
13 from going out much or keeping a job for more than a couple of months. Tr. 568.
14 She stated Plaintiff was only capable of work or work-related preparation for 1-10
15 hours per week. *Id.* She additionally opined Plaintiff was capable of light level
16 work. Tr. 569.

17 In November 2017, Plaintiff's new counselor, Sasha Baker, completed
18 another copy of the same form, noting Plaintiff had difficulty calming her
19 emotions, had sudden outbursts of tearfulness, and struggled with hyperattention
20 and concentration, making it difficult for her to follow instructions or complete
21 tasks. Tr. 573. She found Plaintiff could participate in work-related activities 11-20
22 hours per week. *Id.* She further commented that Plaintiff's condition was not
23 permanent and would likely limit Plaintiff for 6-12 months. Tr. 574.

24 The ALJ gave both of these opinions no weight. Tr. 25-26. He found both to
25 be inconsistent with the medical evidence and lacking in specific limitations, and
26 specifically found Ms. Garcia's assessment was based on Plaintiff's subjective
27 statements and had no basis for any physical limitations, and that Ms. Baker
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1 acknowledged her opinion was not supported by any testing and provided for a
2 duration of no greater than 12 months. *Id.*

3 Plaintiff argues the ALJ failed to consider Ms. Garcia's treatment records,
4 which support her assessment of anxiety and mood dysregulation. ECF No. 17 at
5 14-15. With respect to Ms. Baker's opinion, Plaintiff argues the ALJ
6 misinterpreted the checked box regarding testing and laboratory findings, and
7 argues that each medical opinion does not have to establish a greater than 12-
8 month duration, as long as the condition meets the duration requirement. *Id.* at 16-
9 17. Finally, she makes the same arguments about the ALJ's selective summary of
10 the medical evidence as she made in response to the rejection of the other opinion
11 from Ms. Garcia. *Id.* at 17. Defendant argues all of the reasons offered by the ALJ
12 are germane and that he reasonably interpreted the forms and the record. ECF No.
13 18 at 5-7.

14 The Court finds the ALJ did not offer germane reasons for discounting these
15 opinions. While the forms do not comment on Plaintiff's specific workplace
16 abilities, the statements regarding how many hours she would be able to work do
17 constitute specific functional limitations. There is no evidence to support the ALJ's
18 finding that Ms. Garcia relied on Plaintiff's subjective statements over her own
19 professional judgment and treatment history. "Psychiatric evaluations may appear
20 subjective, especially compared to evaluations in other medical fields. Diagnoses
21 will always depend in part on the patient's self-report, as well as on the clinician's
22 observations of the patient. But such is the nature of psychiatry." *Buck v. Berryhill*,
23 869 F.3d 1040, 1049 (9th Cir. 2017). Similarly, Ms. Baker's statement that the
24 diagnoses she identified were not supported by "testing, lab reports, etc." does not
25 mean there was no objective basis for the opinion, as she offered an explanation for
26 the symptoms that led to the specific diagnoses, and the record reflects Plaintiff

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1 presenting with remarkable mental status exams for the months leading up to Ms.
2 Baker's opinion. Tr. 638-57.

3 Finally, as discussed above, the ALJ's conclusion that the opinions are
4 inconsistent with the medical evidence is not supported by substantial evidence.
5 Some of the ALJ's citations of "minimal psychiatric observations" include
6 abnormal mental status exams, with anxious mood and affect, agitation, irritability,
7 and mania. Tr. 26 (citing to Tr. 477, 518). The remainder of the ALJ's citations are
8 not representative of the record as a whole, which demonstrates cycles of
9 improvement and worsening, consistent with Plaintiff's bipolar condition, as
10 discussed above regarding Ms. Garcia's medical source statement.

11 The Court therefore finds the ALJ failed to offer any germane reasons for
12 discounting the WorkFirst forms. On remand, the ALJ shall reconsider all of the
13 opinion evidence and the record as a whole.

14 **2. Consultative examiner Morgan Liddell**

15 Plaintiff argues the ALJ erred in evaluating the opinion from consultative
16 psychological examiner Dr. Liddell. ECF No. 17 at 17-19.

17 Dr. Liddell examined Plaintiff in May 2017. Tr. 546-50. He diagnosed
18 Plaintiff with bipolar, PTSD, and generalized anxiety disorder, noting the
19 conditions were treatable. Tr. 550. He opined Plaintiff had no obvious limitations
20 in performing simple, routine tasks or detailed and complex tasks, could perform
21 work tasks on a consistent basis, and could maintain regular attendance. *Id.* He
22 further noted her conditions would cause limitations in her ability to interact with
23 coworkers and the public, accept instruction from supervisors, complete a normal
24 workweek without interruptions, and manage the usual stress encountered in the
25 workplace. *Id.*

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1 The ALJ gave this opinion partial weight, noting it was generally consistent
2 with the exam and other records, but noting that Dr. Liddell did not identify the
3 extent of any of the limitations noted. Tr. 24-25.

4 Plaintiff argues the ALJ erred in failing to recontact Dr. Liddell to clarify the
5 limits, and instead claiming to have accounted for the opinion in the RFC. ECF No.
6 17 at 18-19. Defendant argues the ALJ did not actually reject Dr. Liddell's
7 opinion, and there was no obligation to recontact the doctor when the record as a
8 whole was adequately developed. ECF No. 18 at 3-5.

9 The Court finds the ALJ did not err. The ALJ was under no duty to recontact
10 Dr. Liddell to clarify the extent of the limitations when he had access to years of
11 mental health treatment records and other functional opinions to inform the RFC.
12 *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020). However, as this claim is
13 being remanded for further consideration of other evidence, the ALJ will
14 reconsider this opinion as well, along with any additional evidence submitted.

15 CONCLUSION

16 On remand, the ALJ shall reevaluate the medical and other evidence, making
17 findings on each of the five steps of the sequential evaluation process, obtain
18 supplemental testimony from a vocational expert as needed, and take into
19 consideration any other evidence or testimony relevant to Plaintiff's disability
20 claim.

21 Accordingly, **IT IS ORDERED:**

22 1. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is
23 **GRANTED**.

24 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
25 **DENIED**.

26 3. The matter is **REMANDED** to the Commissioner for additional
27 proceedings consistent with this Order.

28 4. An application for attorney fees may be filed by separate motion.

1 The District Court Executive is directed to file this Order and provide a copy
2 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and
3 the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

5 DATED December 14, 2020.

A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE